



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0042; Notice 2]

### Continental Tire the Americas, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Denial of petition.

**SUMMARY:** Continental Tire the Americas, LLC (CTA), has determined that certain Altimax RT 43 replacement passenger car tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. CTA filed a noncompliance report dated April 20, 2021, and subsequently petitioned National Highway Traffic Safety Administration (NHTSA or the “Agency”) on May 13, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the denial of CTA’s petition.

**FOR FURTHER INFORMATION CONTACT:** Jayton Lindley, Office of Vehicle Safety Compliance, NHTSA, (325) 655-0547.

### SUPPLEMENTARY INFORMATION:

#### I. Overview:

CTA has determined that certain Altimax RT43 replacement passenger car tires do not fully comply with the requirements of paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139). CTA filed a noncompliance report dated April 20, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. CTA subsequently petitioned NHTSA on May 13, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this

noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of CTA's petition was published with a 30-day public comment period, on June 9, 2022, in the **Federal Register** (87 FR 35283). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2021-0042."

## **II. Tires Involved:**

Approximately three (3) Altimax RT43 replacement passenger car tires, size 175/65R14 82T, manufactured between March 8, 2020, and March 14, 2020, are potentially involved.

## **III. Noncompliance:**

CTA explains that the noncompliance is due to a mold error in which the subject tires contain a tire identification number (TIN) that omits the 3-digit plant code and the 6-symbol manufacturer's identification mark as required by paragraph S5.5.1(b) of FMVSS No. 139 and 49 CFR 574.5(b). Specifically, CTA should have labeled the subject tires "DOT 036 0F934V 1020" on the outboard sidewall and "DOT 036 0F934V" on the inboard sidewall, but CTA instead labeled "DOT 1020"<sup>1</sup> on the outboard sidewall and "DOT" on the inboard sidewall.

## **IV. Rule Requirements:**

Paragraph S5.5.1(b) of FMVSS No. 139 includes the following requirements, which are relevant to this petition:

- For tires manufactured on or after September 1, 2009, each tire must be labeled with the TIN required by 49 CFR part 574 on the intended outboard sidewall of the tire.

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<sup>1</sup> Blank spaces in this quoted label are representative of how the labeling error appears on CTA's subject tires.

- If a tire does not have an intended outboard sidewall, the tire must be labeled with the TIN required by 49 CFR part 574 on one sidewall and with either the TIN or a partial TIN, containing all characters in the TIN except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall.<sup>2</sup>

## **V. Summary of CTA's Petition:**

The following views and arguments presented in this section, "V. Summary of CTA's Petition," are the views and arguments provided by CTA in support of its petition. They do not reflect the views of the Agency. CTA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

CTA says that in most instances, it "tests its tires to standards which exceed the FMVSS minimums." CTA asserts that "the subject tires contain all the necessary sidewall markings to show compliance with FMVSS testing" and that other than the incorrect TIN marking, the tires "meet or exceed" FMVSS No. 139's performance and labeling requirements.

According to CTA, the serial sidewall of the subject tires displays the correct DOT production week and year, and when combined with other markings available on the subject tires, the tires can be uniquely identified.

CTA cites the following previous inconsequentiality petitions to support its argument:

- a. Michelin North America, Inc., 85 FR 37495 (June 22, 2020).
- b. Cooper Tire & Rubber Company, 82 FR 52966 (November 15, 2017).
- c. Cooper Tire & Rubber Company, 82 FR 17510 (April 11, 2017).

CTA states that it is not aware of any tire failures related to performance that resulted in an accident, injury, property damage, customer complaint, or any field reports associated with the mislabeling.

CTA says that it has quarantined its current inventory of the noncompliant tires—leaving three tires remaining in the market.

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<sup>2</sup> This specific requirement does not apply to retreaded tires, but notably, the subject tires are not retreaded tires.

CTA concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

## **VI. NHTSA's Analysis:**

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.<sup>3</sup> In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.<sup>4</sup>

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected also do not justify granting an inconsequentiality petition.<sup>5</sup> Similarly, mere assertions that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance are unpersuasive. The percentage of potential occupants that could be adversely affected by a noncompliance is not relevant to whether the noncompliance poses an inconsequential risk to safety. Rather, NHTSA focuses on the consequence to an occupant who

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<sup>3</sup> See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

<sup>4</sup> See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it “results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future”).

<sup>5</sup> See *Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

is exposed to the consequence of that noncompliance.<sup>6</sup> The Safety Act is preventive, and manufacturers cannot and should not wait for deaths or injuries to occur in their vehicles before they carry out a recall.<sup>7</sup> Indeed, the very purpose of a recall is to protect individuals from risk.<sup>8</sup>

NHTSA has evaluated the merits of the petition submitted by CTA and is denying CTA's request for relief from notification and remedy.

The purpose of the TIN is to provide a means by which tire manufacturers may notify purchasers of defective or nonconforming tires.

CTA cited three prior petitions in support of their own petition. In the Michelin North America, Inc., 85 FR 37495 (June 22, 2020) petition the subject tires contained a TIN, however, the symbol "DOT" was incorrectly placed after the 1<sup>st</sup> grouping of TIN characters. For the Cooper Tire & Rubber Company, 82 FR 52966 (November 15, 2017) and Cooper Tire & Rubber Company, 82 FR 17510 (April 11, 2017) petitions the manufacturer incorrectly used the wrong characters for the plant code portion of the TIN on one sidewall. The Agency does not find the petitions CTA cited as relevant to this petition. In each of the petitions cited by CTA, the tires contain a full TIN on at least 1 sidewall of the tire that can be utilized for the purposes of identification in the event of a recall. The tires that are the subject of this petition do not have a full or partial TIN on either sidewall.

Furthermore, NHTSA disagrees with CTA's assertion that the date code is sufficient to register and uniquely identify a tire. Without a TIN, there is no means by which purchasers can register the subject tires. In the event of a recall, CTA may be unable to timely notify purchasers of a potential safety issue, and consumers and other drivers will be at risk. If an original purchaser of a subject tire previously sold or will sell their vehicle to a different consumer, it is unlikely that CTA will be able to timely notify the subsequent consumer of potential safety

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<sup>6</sup> See *Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

<sup>7</sup> See, e.g., *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977).

<sup>8</sup> *Id.*

issues. Additionally, it may not even be possible for CTA to determine how to contact a subsequent consumer. For these reasons, the Agency is denying this petition for relief from notification and remedy.

## **VII. NHTSA's Decision:**

In consideration of the foregoing, NHTSA has decided that CTA has not met its burden of persuasion that the subject FMVSS No. 139 noncompliance is inconsequential to motor vehicle safety. Accordingly, CTA's petition is hereby denied and CTA is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

**Anne L. Collins,**

*Associate Administrator for Enforcement.*